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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,871	01/05/2004	Akio Kitamura	118217	3244
25944	7590	05/30/2007		
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			EXAMINER OMGBA, ESSAMA	
			ART UNIT 3726	PAPER NUMBER
			MAIL DATE 05/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/750,871

Applicant(s)

KITAMURA ET AL.

Examiner

Essama Omgba

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5 and 7 is/are rejected.
- 7) ☒ Claim(s) 4, 6 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's arguments with regards to claim 1 are persuasive, therefore the rejection of claims 1 and 4-8 under 35 U.S.C. §103(a) and the finality of the last Office action are hereby withdrawn.

### ***Claim Objections***

2. Claims 1 and 4-8 are objected to because of the following informalities: in claim 1, line 10; claim 4, line 7; claim 5, line 4; claim 6, line 4; claim 7, line 4 and claim 8, line 4, --to-- should be inserted after joined. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Muller (US Patent 3,100,382) or Taylor (US Patent 3,279,195).

With regards to claim 1, Muller discloses a press-in apparatus for a Z profile sheet pile, the apparatus comprising a press-in section 1 for grasping a Z profile sheet 8a having clutches at both ends, wherein the press-in section comprises a grasping mechanism 4a, 4b for grasping two Z profile sheet piles individually to press in, and pressing in simultaneously the two Z profile sheet piles, see column 1, lines 27-33 and

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column 2, lines 12-32. Likewise Taylor discloses a press-in apparatus for Z profile sheet pile (fig. 8) wherein the apparatus comprises a press-in section 11 for grasping a Z profile sheet pile having clutches at both ends, the press-in section comprising a grasping mechanism 14 for grasping two Z profile sheets individually and pressing-in simultaneously the two Z profile sheet piles joined to each other at their clutches, see column 1, lines 60-71 and column 3, lines 61-75. Applicant should note that the recitation "the grasping mechanism grasps each end portion of the two Z profile sheet piles, each grasped end portion being on an opposite side of the clutches at which the two Z profile sheet piles are joined to each other, individually, and presses the two Z profile sheet piles in at a time in a state where the two Z profile sheet piles are joined to each other at clutches thereof" is an intended use recitation and as such has not been given any patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case, Muller and Taylor apparatuses are capable of performing the intended use.

With regards to claims 5 and 7, Muller and Taylor disclose pressing two Z profile sheet piles in at a time in a state where the two Z profile sheet piles are joined to each other at the clutches thereof, see column 1, lines 27-33 of Muller or column 1, lines 60-62 of Taylor.

***Allowable Subject Matter***

5. Claims 4, 6 and 8 would be allowable if rewritten to overcome the objection(s) set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: Applicant's arguments with regards to claim 4 are persuasive.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Essama Omgba  
Primary Examiner  
Art Unit 3726

eo  
May 25, 2007